IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

APPEAL FROM ORDER NO.936 OF 2005
WITH
CIVIL APPLICATION NO.1101 OF 2005

Azim Kasam Mansoori. ...Appellant.
Vs.
Municipal Corporation for Greater Mumbai & Anr. ...Respondents.
....
Mr.B. Unnikrishnan for the Appellant.
Mrs.Geeta Joglekar for the Respondents.
.....

CORAM : DR. D.Y. CHANDRACHUD, J.

November 19, 2005.

P.C.:

The Learned Trial Judge has by his order dated 19th September 2005 declined to grant ad-interim relief. A notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 was issued in respect of an alleged unauthorised construction of the Second and Third Floors of a building known as Azim Building situated at Plot No.117-D, 40th Road, Khar, Mumbai.

According to the Appellant, he has no concern whatsoever in respect of the property at Plot 117D and therefore,

the notice is wrongly issued. The Appellant relied upon assessment bills in respect of 117A and 117B Khar Road. The assessment in respect of the property at 117A Khar shows its existence prior to 1961-62 while, in respect of property 117B Khar the existence of the structure is prior to 1-1-1969. Counsel appearing on behalf of the Municipal Corporation has produced assessment extracts of 117, 117A and 117B Khar Road. The first two extracts show the date of initial assessment as prior to 1961-62 wherein the third shows the date of initial assessment as 1-1-1969.

At the hearing of this appeal, Counsel appearing on behalf of the Appellant stated that the Appellant is not concerned with any property on plot No.117D (in respect of which the notice was issued) and that he is concerned only with 117, 117A and 117B. Counsel appearing on behalf of the Municipal Corporation stated before the Court that having regard to the aforesaid position of the matter, a joint inspection is being conducted by the Ward Inspectors and that a report shall be submitted to the Corporation. In my view even at the ad-interim stage, a closer consideration of the case would be warranted by the Learned Trial Judge. The

Appellant has categorically stated through Counsel that he has no claim in respect of Plot 117D for which a notice has been issued. In order to facilitate a fresh consideration, it would be appropriate to set aside the impugned order dated 19th September 2005 and to remand the matter back to the Learned Trial Judge. In the meantime, parties shall maintain status quo for a period of two weeks from today. It would be open to the Appellant to apply for a renewal of the ad-interim order thereafter before the Trial Court by which time it is expected that the report that would be prepared by the Ward Inspectors would be available for the scrutiny of the Learned Trial Judge. The Appeal is accordingly disposed of. In order to facilitate a fresh consideration of the application for ad-interim relief, the impugned order dated 19th September 2005 is quashed and set aside without the expression of any conclusive opinion by this Court on the merits of the claim of the Appellant.

In view of the disposal of the appeal, the Civil Application is rendered infructuous and is accordingly disposed of.

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